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FM AMEMBASSY BANDAR SERI BEGAWAN
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RUCPDOG/USDOC WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEHXS/ASEAN COLLECTIVE

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SIPDIS

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DEPARTMENT FOR EAP/MTS
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E.O. 12958: N/A
TAGS: [ETRD](#) [KIPR](#) [ECON](#) [PREL](#) [BX](#)
SUBJECT: BRUNEI: SPECIAL 301 REVIEW

Ref: A) State 9475

B) Bandar Seri Begawan 43
C) 07 Bandar Seri Begawan 276
D) 07 Bandar Seri Begawan 165
E) 06 Bandar Seri Begawan 12

SUMMARY

¶1. (SBU) Having recently reengaged with the Government of Brunei on IPR protection and enforcement (refs B, C and D), it is not yet time to put Brunei on the Special 301 Watch List. GoB enforcement efforts have been minimal in the past, but we see increased willingness to work with rights holders to strengthen enforcement cooperation (ref B & C) following a disastrous failed enforcement effort in late 2005 (ref E). Post recommends that we continue to work with the GoB and rights holders to improve enforcement cooperation and not/not place Brunei on the Special 301 Watch List until we have had sufficient time to judge the seriousness of current GoB political will to improve enforcement. END SUMMARY.

Better Engagement on IPR Enforcement

¶2. (SBU) As detailed in refs B & C, the GoB has responded to our increased engagement on IPR enforcement issues since our last formal meeting under the U.S.-Brunei Trade and Investment Framework Agreement (TIFA) (ref D). Brunei authorities acknowledge that optical disc piracy is endemic and that their enforcement efforts have been limited in the recent past, but counter that no rights holder filed a complaint during all of calendar 2007. Notwithstanding this, GoB officials have requested USG training on IPR enforcement and have requested more detailed information on allegations of optical disc manufacture and export from Brunei as police have no indications that such activities are ongoing in Brunei. Further, the GoB has requested our assistance in reestablishing relations with IP rights holders to renew cooperative enforcement efforts.

Getting More/Better Enforcement Action

¶3. (SBU) Police, Customs, and the Attorney General's Office all point to a need under Brunei's Common Law legal system, a legacy of Brunei's century as a British Protectorate, for rights holders to provide expert testimony in person and not/not by deposition to have

a reasonable chance of a successful prosecution. This creates a "chicken-or-egg" situation requiring the rebuilding of mutual trust as authorities are reluctant to take enforcement action for fear of a lack of after-action support from rights holders. Conversely, rights holders remain justifiably concerned that authorities will fail to take appropriate enforcement action in response to complaints (see refs C and E for how we got to this point).

14. (SBU) In response to the GoB's requests for assistance in working with rights holders (refs B, C & D) to improve enforcement, post has reached out to regional representatives of rights holders including Microsoft's in-country representative and the MPAA's Singapore office. These industry representatives have indicated that they prefer a cooperative, as opposed to confrontational approach to improving enforcement in Brunei. USPTO is also planning to offer enforcement training this coming spring (ref B).

COMMENT: Not Yet Time for 301 Watchlisting

15. (SBU) Post believes that placing Brunei on the Special 301 Watch List now could sour GoB officials from following up on their recent initiatives aimed at improving enforcement. We should continue to work to build bridges between authorities and rights holders while pressing the GoB, including through our TIFA dialogue, to follow through on assurances of better enforcement. By next year's Special 301 review, we should have enough of a track record to make a decision about the seriousness of the GoB's new political will to translate talk into stronger enforcement action.

FRIEDMAN